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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 288

JAMES JOINER,

Petitioner,

vs.

ROSETTA DECKARD,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

Your Respondent, Rosetta Deckard, prays that the Writ of Certiorari be denied for having been legally and properly adjudicated in the Circuit and Appellate Courts of the State of Illinois.

JURISDICTION.

Your Respondent believes that there is no federal question to be sought under review because there is nothing repugnant in the Statute under attack and because the Petitioner failed to properly preserve his right to appeal from the Circuit Court of the 17th Judicial District to the Supreme Court of Illinois and thus lost all right of appeal to this Supreme Court.

STATEMENT OF THE CASE.

It is true that the Defendant was requested to sign an acknowledgement of paternity on March 27, 1962. By the signing of said acknowledgement he waived the examination of the complainant as provided by Paragraph 55 of the Revised Statutes as printed in the Petitioner's Brief. The Court did not take any evidence on that day concerning the support, maintenance, education and welfare of the mother or child because the Defendant was then unemployed.

An Amended Order was entered on February 5, 1963, providing for support, since the Defendant had obtained employment at D. C. Electronics in Rockford, Illinois.

On August 16, 1966, a Petition for Contempt was filed by the Plaintiff, the Defendant then being represented by an attorney. The Court heard testimony on August

25, 1966, concerning the amount of back support and continued the Petition to September 30, 1966. No further action was taken on this Petition until the Plaintiff filed on September 21, 1967, a further Petition for Rule to Show Cause.

The Defendant was represented by a second attorney on September 21, 1967, at which time the Court found the Defendant in contempt and ordered him to purge himself by the payment of Fifteen Dollars ($15.00) per week. The Court continued the Petition as it related to the arrearages to October 26, 1967.

On October 26, 1967, the Defendant sought and employed his third attorney who has since prosecuted this appeal.

On October 26, 1967, the Defendant filed a Motion to Vacate for the following reasons:

"1. The Paternity Act is unconstitutional.

2. The Paternity Act violates the Fourteenth Amendment to the Constitution of the United States, and also Sections 2 and 12 of Article II of the Constitution of the State of Illinois.

3. The provisions of the Paternity Act relating to the issuance of a warrant, arrest, bond, imprisonment for neglect to give bond, and security, contempt of court, and imprisonment for contempt are incidents of a criminal prosecution."

All of the other grounds given for reversal by this appeal and as contained in the appeal to the Supreme Court of Illinois were contained in that motion which was filed on October 26, 1967.

The Motion to Vacate was denied at a hearing on November 17, 1967, and the formal order entered thereupon on December 1, 1967.

No appeal or notice of appeal was filed by the Defendant until November 1, 1968. As the Supreme Court of Illinois indicated in their decision, the Defendant attempted at a later date *after his time for appeal had expired* to file further motions based upon the same grounds as those contained in his motion of October 26, 1967 to revive his right to appeal without leave of Court to do so. The written order dated December 1, 1967 specifically provides "that the Motion to Vacate orders and for other relief be denied."

POINTS AND AUTHORITIES.

REASONS FOR DENYING THE WRIT OF CERTIORARI.

Cornmesser v. *Laken*, 43 Ill. App. 2d 324, 193 N.E. 2d 337 (1963), aff'd. 379 U.S. 822.

Eich v. *Czervonko*, 330 Ill. 455, 161 N.E. 864 (1928).

Groves v. *Farmers State Bank*, 368 Ill. 35, 12 N.E. 2d 618 (1938).

REASONS FOR DENYING THE WRIT OF CERTIORARI

1. Your Respondent fully believes that the Defendant has not properly preserved his right to appeal on more than one occasion and will make this argument at the end of a response to the reasons cited for granting the Writ by the Defendant.

Reason No. 1 given by the Petitioner is that the Paternity Act is "unconstitutional" and cites the sections of the Constitutions upon which this argument is derived.

The Paternity Act of 1957 as printed in the Petition is a redrafting of a bastardy act that has existed in Illinois practically since the creation of the State of Illinois. The prime purpose of both of these acts is to determine the putative father and to provide support for the illegitimate child. *Cornmesser* v. *Laken,* 43 Ill. App. 2d 324, 193 N.E. 2d 337 (1963), aff'd. 379 U.S. 822.

The issuance of a warrant or the apprehension of the Defendant is not for the purpose of imprisoning the Defendant but to bring the Defendant before the Court to answer the charges filed by the mother. There is no evidence in the record that Mr. Joiner, the Defendant, was deprived of his liberty or that he was in fact imprisoned. These provisions surely do not violate the federal or state constitutions. No cases are cited in support of this argument.

The Paternity Act does afford an orderly and regular mode of procedure by due process of law, that the Defendant shall have notice, and that the Defendant be granted an opportunity to be heard in his defense.

The Defendant, Mr. Joiner, was not committed to the County Jail for failure or neglect to give bond or security but, in fact, did give a recognizance bond without sureties in the sum of One Thousand Dollars ($1,000.00).

2. There is nothing in the arguments of Point No. 2 to connect with a violation of, or repugnance of, a federal constitution.

3. The complainant filed a Verified Complaint on March 27, 1962, and the Defendant was first brought to Court on March 27, 1962. This could certainly be said, as it was by the Supreme Court of Illinois, to be the date of origin of the litigation. Defendant's failure to file a Motion to Strike or to respond in defense at that time has been waived now that the Statute of Limitations for the Paternity Act has expired.

There is absolutely no doubt that the Defendant acknowledged the paternity of the child and at no time filed a repudiation or motion to set aside his acknowledgement dated March 27, 1962 until he filed a repudiation on December 1, 1967, well past the two-year statute of limitations and a safe period of time for the Defendant, well knowing that the Plaintiff could not reinstitute this action. It should also be noted that the Defendant was in Court on several occasions subsequent to the acknowledgement of paternity, and at no time did he or his various attorneys repudiate or attempt to repudiate the acknowledgement of paternity. As a matter of fact, at no time did he or his attorneys object to the procedures that were being followed or file motions to set aside the orders of the Court based upon any alleged violations of the Paternity Act. Certainly, this white, intelligent, adult male with two accomplished attorneys admitted to the

practice of the State of Illinois would have filed a repudiation or motion to set aside or vacate these orders if there had been any doubt in his mind as to the real paternity of this child.

It was not until he hired the services of Attorney John Snively that he suddenly realized that after all those years he was not the father of the illegitimate child. It would certainly be a travesty of justice if this or any other Court would deny the interests of the mother or the child by a denial of paternity some five (5) years after the child was born and after ample opportunity within which to preserve any rights that he had by virtue of the due process of law.

Your Respondent, however, refutes the arguments of Defendant in several respects. First, the Court need not examine the woman under oath in the event that the Defendant acknowledges paternity in writing. Second, the accused did have an opportunity to controvert the charge and was certainly advised of his rights by the Court. Third, he did have an opportunity to submit to a blood test and certainly the Court advised him of his right to do so. Fourth, he was obviously advised relative to acknowledgement of paternity and the effect of it, because it was discussed at that time that the Defendant was not then employed and that the Court would have to continue the time for the entering of a money order for support because of this unemployment. There is nothing in the record to indicate that this adult male was unable to read his acknowledgement, and there is nothing in the record to indicate that he was not advised of his rights. Fifth, evidence need not be heard by the Trial Court once a Defendant acknowledges paternity. Sixth, the Court did continue the matter for further hearing as is the Court's right.

4. All of these arguments were contained in Argument 3 of Petitioner's Brief, and are not supported by the evidence, by the Report of Proceedings or by anything contained in this Brief. There is nothing to indicate that anything other than fair play and due process was involved at the time of the original hearing thereupon and subsequent hearings. The Defendant has the right to waive many of the complaints contained in said argument and, in fact, did so by the acknowledgement of paternity.

5. The Amended Order of February 5, 1963 finds that the Court did find on March 27, 1962 that the Defendant was found to be the father of James Curtis Deckard, a child born out of wedlock on January 17, 1962. This Amended Order of February 5, 1963 was never appealed from nor was any motion entered thereupon until October 26, 1967, more than four and one-half years subsequent to the entry of said Amended Order.

6. The Amended Order did render a judgment on February 5, 1963.

7. It is conceded that the State's Attorney instituted the paternity proceeding, and it is proper for the State's Attorney to represent the Plaintiff.

There is nothing in the Paternity Act, however, to prohibit a privately employed attorney from representing a complaining mother.

Certainly, her rights are not limited because she employs a private attorney, and at no time has the State's Attorney of Winnebago County entered any objection or refusal to allow her this privilege.

However, if the State's Attorney is still a party to this lawsuit, then the Defendant has not perfected his

appeal, because the State's Attorney of Winnebago County would be an essential party to this proceeding and notice of appeal should have been filed upon the State's Attorney in order to perfect the appeal.

It is clear from a reading of the Abstract of Record, and it is true, that the State's Attorney of Winnebago County has not been served with notice of appeal and has not been made a party to this appeal as required by statute.

Certainly, there is not a denial of due process of law of the Defendant by virtue of the Plaintiff's selecting a private attorney to seek enforcement of orders which had been entered against the Defendant.

8. The question of whether or not the Plaintiff is entitled to a judgment against the Defendant is not a question properly raised before this Court since it does not involve a violation or repugnance of the Constitution of the United States. This is one more remedy allowed to a mother to collect support under the Paternity Act. The Defendant had filed a bond which was by recognizance only and without sureties. Certainly, this was to the advantage of the Defendant and that the Court did not require sureties and a more collectible bond is not a denial of due process to the Defendant who is thus saved that responsibility and cost.

To attempt to collect, however, from the recognizance bond without surety would be a waste of time and effort. The Defendant was in arrears and has not argued at any time before the Circuit Court, the Illinois Supreme Court, or this Court that the amount is incorrect or that the Judge refused to allow him testimony in determining the amount or that in any way he was denied due proc-

ess by the entering of this amount as a correct amount due to the Plaintiff. Certainly, the Plaintiff was legally entitled to recover the amount which had not been paid by the Defendant.

9. The appeal was not taken in ample time. A final judgment was entered on March 27, 1962 finding the Defendant to be the father of the illegitimate child. A second final order was entered on February 5, 1963. Proceedings under the Paternity Act are civil in nature and governed by the provisions of the Civil Practice Act except as otherwise specifically provided in the Paternity Act and is thus subject to the time limitations provided in the Civil Practice Act for appeal. *Cornmesser v. Laken*, 43 Ill. App. 2d 324, 193 N.E. 2d 337 (1963); Ill. Rev. Stat. 1961, 106¾, Sec. 64.

Section 303 (Supreme Court Rule 303), Ill. Rev. Stat., Chap. 110(a)—Practice Rules, provides as follows:

> "(a) TIME. Except as provided in Paragraph (b) [not applicable to this case] below, the notice of appeal must be filed with the Clerk of the Circuit Court within thirty (30) days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment as filed, whether in a jury or a non-jury case, within thirty (30) days after the entry of the order disposing of the motion."

At the time of the 1962 and 1963 orders this time for appeal was sixty (60) days.

It is apparent, therefore, that the appeal from the 1962 or 1963 orders was too late. Those orders were final for purposes of review even though matters may have been left for future determination, such as enforcement of orders, and which are merely incidental to the ulti-

mate rights which have been adjudicated by the judgment or decree. *Eich* v. *Czervonko*, 330 Ill. 455, 161 N.E. 864 (1928); *Groves* v. *Farmers State Bank*, 368 Ill. 35, 12 N.E. 2d 618 (1938).

The entry of the order of February 5, 1963 fixing the amount of support was the final determination of the ultimate rights of the parties put in issue by the Complaint and Amended Complaint, and the time for appeal began as of that date. It is the contention of Respondent that the Supreme Court of Illinois was correct in stating that that Court and this Court had lost jurisdiction to entertain that and this appeal.

The motion of Defendant to vacate the 1962 and 1963 orders filed by the Defendant on October 26, 1967 was denied by the Court on November 24, 1967 in an order entered on December 1, 1967 which order denied completely the relief prayed for in the October 26, 1967 motion which as was earlier said in this brief claimed that the Paternity Act was unconstitutional, violated the 14th Amendment to the Constitution of the United States and contained all of the points raised by this appeal and by the appeal to the Supreme Court of Illinois.

The Defendant did not file an appeal from this order until November 1, 1968. Instead, throughout the course of the next year he filed numerous repetitive, unsuccessful, motions, and, finally, on November 1, 1968 filed for the first time a notice of appeal.

Respondent is not sympathetic to the claim made by the Defendant that he was treated unfairly and without due process of law. The Plaintiff sought the services of the State's Attorney of Winnebago County to recover for her support from the Defendant upon becoming pregnant. The Defendant appeared in Court and openly ac-

knowledged that he was the father of the child. He was subsequently ordered to pay support and failed to make all of the payments required by him requiring the filing of various petitions for contempt. He was represented by two attorneys prior to the filing of various motions by Attorney John Snively. Ample time was given to him to renounce his acknowledgement of paternity, and various avenues of relief were available to him despite his present plea that he was unduly served by the law.

What of the Plaintiff and of the child? The Paternity Act as reprinted in Petitioner's Brief limits the Plaintiff's right to relief to a period of two years from the date of birth of the child or from two years from the acknowledgement of the child by the reputed father. Paragraph 54, Paternity Act, on pages 5(a) and 6(a) of Petitioner's Brief. Since the two-year Statute of Limitation has expired, the Defendant would certainly violate the due process of law granted to the Plaintiff and to the child, should his appeal be allowed. It was the Defendant who was in Court and acknowledged paternity. It was the Defendant who had ample opportunity to file an appeal within the appeal period and within the period of limitation for the Paternity Act. It was the Defendant who hired three separate attorneys to protect his interests, the first two of which did not move to vacate judgment or move to repudiate paternity. The Defendant has had his rights protected but has failed to act within the time limitations granted to him for appeal. Certainly, the child and Plaintiff should not now be somehow punished because of the Defendant's failure to perfect his appeal properly or deny paternity at the opportunities given to him. The time for appeal cannot be revised by the maneuverings of an attorney who has failed to properly preserve his right to appeal.

CONCLUSION.

The Circuit Court of the 17th Judicial Circuit of Illinois and the Supreme Court of Illinois have upheld the orders requiring the Defendant to pay support for the illegitimate child whom he voluntarily acknowledged to be his.

The Defendant has failed to properly preserve or perfect his appeal or to object or file appeal within a timely period.

There has been no substantial denial of the constitutional rights of the Defendant, and the Paternity Act of Illinois has not violated the due process of law to which the Defendant should be accorded.

There is nothing in the Petition of the Defendant to sustain his argument, and no cases have been cited by him to indicate the correctness of his position.

For the reasons stated, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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